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DEPARTMENT OF JUSTICE



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September 17, 2019

Via Email to 79141-23119708@requests.muckrock.com

Taylor Scott Amarel
c/o MuckRock News
DEPT MR 79141
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RE: Public Records Request No. 2019-01856

Dear Mr. Amarel:

This letter is in further response to your recent correspondence, which was received by the California Attorney General, Department of Justice on August 21, 2019, in which you sought records pursuant to the Public Records Act as set forth in Government Code section 6250 et seq.

Specifically, you requested that we provide the following:

The final 51-100th emails sent from email accounts used to conduct government business by Attorney General Kamala Harris. (You may ignore the first 50 most recent emails).

On September 3, 2019, we extended the period to provide our response because your request required consultation with two or more components of the agency having substantial subject matter interest in the request.

We have located non-exempt documents responsive to your request and will produce, in whole or in part, those that are not exempt from disclosure on a rolling basis. As we continue to review the records we have located, we will redact or withhold any exempt or privileged information or communications. We will not produce any records or portions of records that fall under the following exemptions:

The Attorney-Client Privilege

The PRA exempts the following from disclosure: "Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege." (Gov. Code, § 6254, subd. (k); *Roberts v. City of*

Palmdale (1993) 5 Cal.4th 363, 370; see also Evid. Code, § 954.) The attorney-client privilege is absolute and disclosure may not be compelled, regardless of relevance, necessity, or any particular circumstances in a given case. (*Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725, 732; see also *Palmer v. Superior Court* (2014) 231 Cal.App.4th 1214, 1227.) “Although exercise of the privilege may occasionally result in the suppression of relevant evidence, the Legislature of this state has determined that these concerns are outweighed by the importance of preserving confidentiality in the attorney-client relationship.” (*Mitchell v. Superior Court* (1984) 37 Cal.3d 591, 599; see also *Kerner v. Superior Court* (2012) 206 Cal.App.4th 84, 111.) The attorney-client privilege protects confidential communications between the attorney and the client, as well as communications made to others in advancement of the attorney-client relationship. (*Barber v. Municipal Court* (1979) 24 Cal.3d 742, 753-754; *STI Outdoor v. Superior Court* (2001) 91 Cal.App.4th 334, 340-341.) Documents are exempt from disclosure under the PRA pursuant to the attorney-client privilege under Government Code section 6254, subdivision (k), which incorporates confidentiality provisions contained in other laws. (*County of Los Angeles v. Superior Court* (2000) 82 Cal.App.4th 819, 833.)

The Attorney Work-Product Doctrine

The attorney work-product doctrine protects the confidentiality of any writing that reflects an attorney’s impressions, conclusions, opinions, legal research, or legal theories, which is maintained as confidential. (Code Civ. Proc., § 2018.030.) The attorney work-product doctrine creates a qualified privilege against discovery of general work product, and an absolute privilege against disclosure of writings containing the attorney’s impressions, conclusions, opinions, or legal theories. (*County of Los Angeles v. Superior Court, supra*, 82 Cal.App.4th at p. 833, quoting *BP Alaska Exploration, Inc. v. Superior Court* (1988) 199 Cal.App.3d 1240, 1250; see also *Coito v. Superior Court* (2012) 54 Cal.4th 480, 488.) Documents are exempt from disclosure under the PRA pursuant to the attorney work-product doctrine under Government Code section 6254, subdivision (k), which incorporates confidentiality provisions contained in other laws. (*County of Los Angeles v. Superior Court, supra*, 82 Cal.App.4th at p. 833.)

There is no waiver of the privilege when attorney work-product is provided to a party with a common interest who has an interest in maintaining the confidentiality of a significant part of the work product when the parties have a reasonable expectation that the work product will remain confidential, and the disclosure is “reasonably necessary for the accomplishment of the purpose for which the lawyer was consulted” as set forth in Evidence Code section 912, subdivision (d). (*OXY Resources California LLC v. Superior Court* (2004) 115 Cal.App.4th 874, 890-891.)

The Deliberative-Process Privilege

The deliberative-process privilege exempts from disclosure materials that would expose an agency’s decision-making process in such a way as to discourage candid discussion within the agency, and thereby undermine the agency’s ability to perform its functions. (*Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1342-1343, 1346.) Any documents containing

statutory interpretation, analyses, draft language, and memoranda concerning the strengths and weaknesses of a particular proposal would be covered by this privilege. Records that reveal deliberative processes are protected from disclosure pursuant to a PRA request through application of Government Code section 6255. If the public interest in nondisclosure clearly outweighs the public interest in disclosure, the deliberative-process privilege applies. (*California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 172.)

The Pending Litigation Exemption

Agencies may withhold the disclosure of records pertaining to pending litigation to which the public agency is a party until the pending litigation has been finally adjudicated or otherwise settled. (Gov. Code, § 6254, subd. (b).) The pending litigation exemption does not duplicate the attorney work-product exemption, but is broader and covers documents prepared by the agency in anticipation of, or for use in, litigation. (*County of Los Angeles v. Superior Court, supra*, 82 Cal.App.4th at p. 831; *Fairley v. Superior Court* (1998) 66 Cal.App.4th 1414, 1422.) The pending litigation exemption also does not duplicate the attorney-client privilege because it exempts “litigation records generally,” and not only those documents that are privileged. (*Fairley v. Superior Court, supra*, 66 Cal.App.4th at p. 1422 fn. 5.)

Personal Privacy; Identifying Information

In providing the records requested, we will redact certain private identifying information, such as email addresses, based on considerations of personal privacy. (Cal. Const., art. I, §1, as incorporated into the Public Records Act by Gov. Code, § 6254, subd. (k); Gov. Code, § 6255.)

Redactions Made to Protect the Security and Integrity of Computer Systems

We will also redact information that, if released, would increase the potential for an attack on the department’s computer systems. (Gov. Code, § 6254.19.) This information includes web and file paths, server identifications, and system login identifiers.

We are working diligently to provide you with our first production and anticipate sending it out on or around October 8, 2019. We appreciate your patience in this matter.

Sincerely,

/s/ Maureen Onyeagbako

MAUREEN C. ONYEAGBAKO
Deputy Attorney General

For XAVIER BECERRA
Attorney General

MCO: